

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Document # 23

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USA

-v-

Cano  
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U.S.C.A. #

04-cr-0236

U.S.D.C. # 07-cv-3412

← file  
here

JUDGE:

DC

DATE:

Feb. 25, 2008

INDEX TO THE RECORD ON APPEAL

PREPARED BY (NAME):

THOMAS R. PISARCZYK

FIRM:

U.S. DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORK

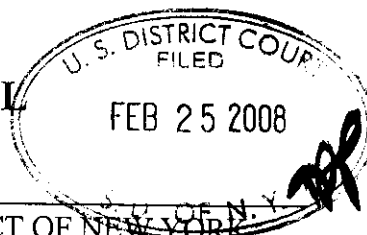
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DISTRICT COURT DOCKET ENTRIES -----

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CLERK'S CERTIFICATE

SEE ATTACHED LIST OF NUMBERED DOCUMENTS

(X) Original Record

( ) Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.  
for the Second Circuit on the 25th Day of February, 2008.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

<p>-----</p> <p style="text-align: center;">USA</p> <p style="text-align: center;">-v-</p> <p style="text-align: center;">Cano</p> <p>-----</p>	<p>U.S.C.A. # _____</p> <p>U.S.D.C. # <u>04-cr-0236</u> ←</p> <p>JUDGE: <u>DC</u></p> <p>DATE: <u>Feb. 25, 2008</u></p>
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**Clerk's Certificate**

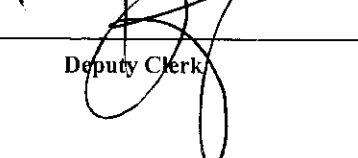
I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 Through 22, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

<u>Date Filed</u>	<u>Document Description</u>
_____	_____
_____	_____
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_____	_____
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In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York, this 25<sup>th</sup> Day of February In this year of our Lord, Two Thousand and Eight, and the Independence of the United States this 232<sup>ND</sup> year.

**J. Michael McMahon, Clerk**

By \_\_\_\_\_  
Deputy Clerk



APPEAL, CLOSED, ECF, PRIOR

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CRIMINAL DOCKET FOR CASE #: 1:04-cr-00236-DC-1**  
**Internal Use Only**

Case title: USA v. Cano

Related Case: 1:07-cv-03412-DC

Magistrate judge case number: 1:04-mj-00290-UA

Date Filed: 03/11/2004

Date Terminated: 08/10/2005

Date Filed	#	Docket Text
02/10/2004		Arrest of Nestor Cano. In Violation of 21 U.S.C. 846, 812, 841 (a) (1), 841 (b) (1) (A) (POSSESSION WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE) (dif, )(1:04-mj-00290-UA) (Entered: 02/18/2004)
02/11/2004	1	COMPLAINT as to Nestor Cano (1). In Violation of 21 U.S.C. 846, 812, 841 (a) (1), 841 (b) (1) (A) (POSSESSION WITH INTENT TO DISTRIBUTE A CONTROLLED SUBSTANCE)(Signed by Judge Gabriel W. Gorenstein ) (dif, )(1:04-mj-00290-UA) (Entered: 02/18/2004)
02/11/2004		Minute Entry for proceedings held before Judge Gabriel W. Gorenstein :Initial Appearance as to Nestor Cano held on 2/11/2004., with Retained Attorney Sabrina Shroff and AUSA Jessica Roth for the government. DETENTION ON CONSENT W/O PREJUDICE; Preliminary Examination set for 3/12/2004 10:00 AM before Judge Unassigned. (dif, )(1:04-mj-00290-UA) (Entered: 02/18/2004)
02/11/2004		Attorney update in case as to Nestor Cano. Retained Attorney Sabrina P. Shroff for Nestor Cano added. (dif, )(1:04-mj-00290-UA) (Entered: 02/18/2004)
02/11/2004	2	NOTICE OF ATTORNEY APPEARANCE: Retained Attorney Sabrina P. Shroff appearing for Nestor Cano. (dif, )(1:04-mj-00290-UA) (Entered: 03/01/2004)
03/11/2004	3	INDICTMENT FILED as to Nestor Cano (1) count(s) 1. (jm, ) (Entered: 03/15/2004)
03/11/2004		Case Designated ECF as to Nestor Cano. (jm, ) (Entered: 03/15/2004)
03/17/2004		Minute Entry for proceedings held before Judge Denny Chin :Pretrial Conference as to Nestor Cano held and concluded on 3/17/2004. Dft Cano pres w/atty Sabrina Shroff and AUSA Jessica Roth pres. PTC set for 4/27/04 @ 4:30 p.m. T/E from 3/17/04 - 4/27/04. Detained. (ja, ) (Entered: 08/20/2004)
05/11/2004	4	ENDORSED LETTER as to Nestor Cano addressed to Judge Chin from Attorney Sabrina P. Shroff dated 5/7/04 re: confirming the exclusion of time from 4/27/04 to 5/27/04. The next appearance has been adjourned from 4/27/04 to 5/27/04. Judge memo-endorsed: The time until 5/27/04 is excluded for speedy trial purposes. So ordered. (Signed by Judge Denny Chin on 5/8/04)(ph, ) (Entered: 05/12/2004)
06/01/2004	5	ENDORSED LETTER as to Nestor Cano addressed to 6/3/04 from 5/25/04 re: Reschedule Conference., ORDER EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT as to Nestor Cano. Time excluded from 5/25/04 until 6/3/04., as to Nestor Cano; Pretrial Conference set for 6/3/2004 10:30 AM before Judge Denny Chin. Judge Memo-endorsed..SO ORDERED. (Signed by Judge Denny Chin on 5/27/04)(jw, ) (Entered: 06/02/2004)
06/07/2004		Minute Entry for proceedings held before Judge Denny Chin :Pretrial Conference as to Nestor Cano held on 6/7/2004, as to Nestor Cano; Pretrial Conference set for 7/8/2004 04:00 PM before Judge Denny Chin. Dft Cano present with atty Sabrina Shroff. AUSA Daniel Levy for Jessica Roth. PTC held and concluded. Next PTC set for 7/8/04 at 4:00pm. T/E from 6/7/04 - 7/8/04. Detained. (jw, ) (Entered: 06/09/2004)
07/13/2004	6	ENDORSED LETTER as to Nestor Cano addressed to Judge Chin from AUSA Jessica A. Roth dated 7/13/04 re: requesting a one-week adjournment of the government's time to respond to the defendant's motion to dismiss the indictment for lack of venue, which is due on 7/9/04. Judge memo-endorsed: Adjourned to 7/21/04 at 11:00 a.m. The time until then is excluded. So ordered. (Signed by Judge Denny Chin on 7/9/04)(ph, ) (Entered: 07/16/2004)
07/13/2004		Set/Reset Hearings as to Nestor Cano: Pretrial Conference set for 7/21/2004 11:00 AM before Judge Denny Chin.(ph, ) (Entered: 07/16/2004)
07/21/2004		Minute Entry for proceedings held before Judge Denny Chin :Pretrial Conference as to Nestor Cano held and concluded on 7/21/2004. Dft Cano pres w/atty Sabrina Shroff. AUSA Jessica Roth pres. Jury Trial set for 10/12/2004 10:00 AM before Judge Denny Chin. T/E from 7/21/04 to 10/12/04. Detained. (ja, ) Modified on 8/20/2004 (ja, ). (Entered: 08/20/2004)
10/06/2004	7	ENDORSED LETTER as to Nestor Cano addressed to Judge Chin from Jessica A. Roth dated 10/4/04 re: Reschedule Conference., as to Nestor Cano; Pretrial Conference set for 10/22/2004 03:00 PM before Judge Denny Chin. Judge Memo-endorsed...SO ORDERED. (Signed by Judge Denny Chin on 10/5/04)(jw, ) (Entered: 10/06/2004)
10/27/2004		Minute Entry for proceedings held before Judge Denny Chin :Pretrial Conference as to Nestor Cano held on 10/27/2004. Dft Cano pres w/atty Sabrina Shroff and AUSA Jessica Roth pres. Dft detained. (ja, ) (Entered: 08/17/2005)
10/29/2004		Minute Entry for proceedings held before Judge Denny Chin :Arraignment as to Nestor Cano (1) Count 1, held on 10/29/2004. Dft pres w/atty Sabrina Shroff and AUSA Jessica Roth pres. Dft withdraws plea of Not Guilty and pleads Guilty to Count 1 of the Indictment. Guilty plea shall conclude on 11/5/04. Dft detained. (ja, ). (Entered: 08/17/2005)
10/29/2004		Minute Entry for proceedings held before Judge Denny Chin : Plea entered by Nestor Cano (1) Count 1, Not Guilty. (ja, ) (Entered: 08/17/2005)
11/01/2004	8	TRANSCRIPT of Proceedings as to Nestor Cano held on 10/28/2004 before Judge Denny Chin. (jsa, ) (Entered: 11/01/2004)
11/05/2004	9	TRANSCRIPT of Proceedings as to Nestor Cano held on 10/29/04 before Judge Denny Chin. (Belfiore, John) (Entered: 11/05/2004)

11/05/2004		Minute Entry for proceedings held before Judge Denny Chin :Change of Plea Hearing as to Nestor Cano held on 11/5/2004. Dft Cano pres w/atty Sabrina Shroff and AUSA Jessica Roth pres. Guilty plea completed. PSI ordered, sentence date set for 2/7/05 at 4:30 p.m. Dft detained. (ja, ) (Entered: 08/17/2005)
11/05/2004		Change of Not Guilty Plea to Guilty Plea as to Nestor Cano (1) Count 1. (ja, ) (Entered: 08/17/2005)
11/05/2004		Minute Entry for proceedings held before Judge Denny Chin : Plea entered by Nestor Cano (1) Guilty as to Count 1. (ja, ) (Entered: 08/17/2005)
11/05/2004		ORDER FOR PRE-SENTENCE INVESTIGATION REPORT as to Nestor Cano. (Signed by Judge Denny Chin on 11/5/04)(ja, ) (Entered: 08/17/2005)
12/13/2004	10	TRANSCRIPT of Proceedings as to Nestor Cano held on 11/5/04 before Judge Denny Chin. (mo, ) (Entered: 12/13/2004)
05/02/2005	11	ENDORSED LETTER as to Nestor Cano addressed to Judge Chin from requesting a two-week adjournment of sentencing in this matter, currently scheduled for 5/5/05 at 4:00 p.m. dated 5/1/05 re: requesting a two-week adjournment of this matter, currently scheduled for 5/4/05 at 4:00 p.m. Judge memo-endorsed: Adjourned to 5/31/05 at 4:00 p.m. (Signed by Judge Denny Chin on 5/2/05)(ph, ) (Entered: 05/03/2005)
05/02/2005		Set/Reset Hearings as to Nestor Cano: Sentencing set for 5/31/2005 04:00 PM before Judge Denny Chin.(ph, ) (Entered: 05/03/2005)
06/15/2005		Minute Entry for proceedings held before Judge Denny Chin :Pretrial Conference as to Nestor Cano held on 6/15/2005 Dft Nestor pres w/atty Sabrina Shroff. AUSA Jessica Roth. Spanish interpreter pres. Hearing set for 7/14/2005 10:00 AM before Judge Denny Chin. Dft detained. (ja, ) (Entered: 06/20/2005)
07/13/2005	12	ENDORSED LETTER as to Nestor Cano addressed to Judge Chin, from Sabrina P. Shroff, Atty for dft, dated 7/13/05, re: request adjournment of the Fatico hrg scheduled for tomorrow... -- Judge endorsed: Application DENIED. SO ORDERED. (Signed by Judge Denny Chin on 7/13/05)(ja, ) (Entered: 07/14/2005)
07/14/2005		Minute Entry for proceedings held before Judge Denny Chin :Fatico Hearing as to Nestor Cano held but not concluded on 7/14/2005. Dft Cano pres w/atty Sabrina Shroff, AUSA Jessica Roth. Bail cont'd. (ja, ) (Entered: 08/17/2005)
07/19/2005		Minute Entry for proceedings held before Judge Denny Chin :Fatico Hearing as to Nestor Cano held and concluded on 7/19/2005. Dft Cano pres w/atty Sabrina Shroff and AUSA Jessica Roth pres. Sentencing set for 8/8/2005 02:00 PM before Judge Denny Chin. Dft detained. (ja, ) (Entered: 08/17/2005)
07/22/2005	13	TRANSCRIPT of Proceedings as to Nestor Cano held on 06/15/05 before Judge Denny Chin. (es, ) (Entered: 07/22/2005)
08/08/2005	14	TRANSCRIPT of Proceedings as to Nestor Cano held on July 19, 2005 before Judge Denny Chin. (Cardona, Gilbert) (Entered: 08/08/2005)
08/08/2005		Minute Entry for proceedings held before Judge Denny Chin :Status Conference as to Nestor Cano held on 8/8/2005. Dft Cano pres w/atty Sabrina Shroff and AUSA Jessica Roth pres. Dft's sentence is set forth in the "Judgment in a Criminal Case", signed on 8/10/05. Dft detained. (ja, ) (Entered: 08/17/2005)
08/08/2005		Minute Entry for proceedings held before Judge Denny Chin :Sentencing held on 8/8/2005 for Nestor Cano (1) Count 1. (ja, ) (Entered: 08/17/2005)
08/10/2005	15	FILED JUDGMENT IN A CRIMINAL CASE as to Nestor Cano (1). The defendant Nestor Cano pleaded guilty to Count(s) 1, Imprisonment: 108 months. The Court recommends to the Bureau of Prisons that the defendant be designated to a facility in the NYC metropolitan area. The defendant is remanded to the custody of the United States Marshal. Supervised Release: 5 years. SA: \$100.00. (Signed by Judge Denny Chin on 8/10/05)(ja, ) (Entered: 08/17/2005)
08/17/2005		Judgment entered in money judgment book as #05,1584 as to Nestor Cano in the amount of \$ 100.00, re: 15 Judgment. (dt, ) (Entered: 08/18/2005)
08/17/2005	16	NOTICE OF APPEAL by Nestor Cano from 15 Judgment,. Copies of Notice of Appeal mailed to Attorney(s) of Record: A.U.S.A and Court Reporters. CJA Attorney, NO FILING FEE REQUIRED. (nd, ) (Entered: 08/26/2005)
08/17/2005		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Nestor Cano to US Court of Appeals re: 16 Notice of Appeal - Final Judgment. (nd, ) (Entered: 08/26/2005)
08/17/2005		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Nestor Cano re: 7 Endorsed Letter,, Set Deadlines/Hearings,, 12 Endorsed Letter,, 16 Notice of Appeal - Final Judgment, 11 Endorsed Letter,, 15 Judgment,, 3 Indictment were transmitted to the U.S. Court of Appeals. (nd, ) (Entered: 08/26/2005)
09/30/2005		USCA SCHEDULING ORDER as to Nestor Cano related to 16 Notice of Appeal - Final Judgment filed by Nestor Cano,, USCA Case Number 05-4683-cr. Roseann B. MacKechnie, Clerk USCA. Defendant Brief due by 11/17/2005. Government Brief due by 12/19/2005. Appeal Record due by 10/18/2005. (nd, ) (Entered: 10/03/2005)
11/23/2005		Judgment Returned Executed for 15 Judgment, as to Nestor Cano on 9/14/05. Defendant committed to Allenwood. (fk, ) (Entered: 12/06/2005)
12/19/2005	17	1st Supplemental ROA Sent to USCA (Index). Notice that the Supplemental Index to the record on Appeal as to Nestor Cano re: 16 Notice of Appeal - Final Judgment USCA Case Number 05-4683-cr, 3 Copies of the index, Certified Supplemental Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (nd, ) (Entered: 12/20/2005)
07/27/2006	18	MANDATE of USCA (certified copy) as to Nestor Cano re: 16 Notice of Appeal - Final Judgment. USCA Case Number 05-4683-cr. Upon due consideration, it is hereby Ordered, Adjudged, and Decreed that the appeal is hereby DISMISSED. Roseann B. MacKechnie, Clerk USCA. Issued As Mandate: 7/20/06. (bw, ) Additional attachment(s) added on 8/3/2006 (nd, ). (Entered: 08/02/2006)
07/27/2006		Transmission of USCA Mandate/Order to the District Judge (Chin, J.) on 8/2/06 re: 18 USCA Mandate - Final Judgment Appeal. (bw, ) (Entered: 08/02/2006)
05/03/2007	19	MOTION to Vacate under 28 U.S.C. 2255 Document filed by Nestor Cano. (laq) Civil case 1:04-cv-236 opened. (Entered: 05/03/2007)
05/03/2007		MOTION to Vacate under 28 U.S.C. 2255. Document filed by Nestor Cano. (laq) Civil case 1:07-cv-3412 opened. (Entered: 05/03/2007)

07/16/2007	<u>19</u>	MEMORANDUM DECISION as to Nestor Cano....[See Order for complete text]... Conclusion: For the reasons set forth above, Cano has failed to demonstrate any basis for relief under 28 U.S.C. Section 2255. The motion is therefore denied. Because Cano has not made a substantial showing of the denial of a constitutional right, I decline to issue a certificate of appealability. I certify pursuant to 28 U.S.C. Section 1915(a)(3) that any appeal taken from this decision and order would not be taken in good faith. The Clerk of the Court shall close this case. (Signed by Judge Denny Chin on 7/12/07); refer to 07-cv-3412(DC) also. (bw) (Entered: 07/17/2007)
08/01/2007	<u>20</u>	MOTION for Reconsideration pursuant to Rule 59(e). Document filed by Nestor Cano. [Refer to 07-cv-3412(DC) also] (bw) (Entered: 08/10/2007)
08/13/2007	<u>21</u>	ORDER as to Nestor Cano. On 7/12/07, I denied pro se litigant Nestor Cano's motion for habeas relief pursuant to 28 U.S.C. Section 2255, and declined to issue a certificate of appealability. Cano now moves for reconsideration of the July 12th decision, pursuant to F.R.Civ.P. 59(e)....[See Order]... For the reasons set forth above and those in the July 12th decision, the motion for reconsideration is hereby denied. Because Cano has not made a substantial showing of the denial of a constitutional right, I decline to issue a certificate of appealability. I certify pursuant to 28 U.S.C. Section 1915(a)(3) that any appeal taken from this order would not be taken in good faith. (Signed by Judge Denny Chin on 8/13/07); refer to 07-cv-3412(DC) also. (bw) (Entered: 08/14/2007)
02/11/2008	<u>22</u>	NOTICE OF APPEAL by Nestor Cano from <u>21</u> Order. (tp) (Entered: 02/25/2008)
02/11/2008		Appeal Remark as to Nestor Cano re: <u>22</u> Notice of Appeal - Final Judgment. \$455.00 APPEAL FEE DUE. IFP REVOKED 8/13/07. COA DENIED 8/13/07. (tp) (Entered: 02/25/2008)
02/25/2008		Transmission of Notice of Appeal to the District Judge re: <u>22</u> Notice of Appeal - Final Judgment. (tp) (Entered: 02/25/2008)
02/25/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Nestor Cano to US Court of Appeals re: <u>22</u> Notice of Appeal - Final Judgment. (tp) (Entered: 02/25/2008)

2255, APPEAL, CLOSED

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:07-cv-03412-DC**  
**Internal Use Only**

Cano v. USA  
Assigned to: Judge Denny Chin  
Related Case: 1:04-cr-00236-DC-1  
Cause: 28:2255 Motion to Vacate / Correct Illegal Sentence

Date Filed: 04/30/2007  
Date Terminated: 07/16/2007  
Jury Demand: None  
Nature of Suit: 510 Prisoner: Vacate Sentence  
Jurisdiction: U.S. Government Defendant

Date Filed	#	Docket Text
04/30/2007	<u>1</u>	MOTION to Vacate, Set Aside or Correct Sentence (28 U.S.C. 2255). NO FURTHER ENTRIES. PLEASE SEE CRIMINAL CASE: 04-cr-0236. Document filed by Nestor Cano. (laq) (Entered: 05/03/2007)
04/30/2007		Magistrate Judge Michael H. Dolinger is so designated. (laq) (Entered: 05/03/2007)
07/16/2007		MEMORANDUM DECISION as to Nestor Cano....[See Order for complete text]... Conclusion: For the reasons set forth above, Cano has failed to demonstrate any basis for relief under 28 U.S.C. Section 2255. The motion is therefore denied. Because Cano has not made a substantial showing of the denial of a constitutional right, I decline to issue a certificate of appealability. I certify pursuant to 28 U.S.C. Section 1915(a)(3) that any appeal taken from this decision and order would not be taken in good faith. The Clerk of the Court shall close this case. (Signed by Judge Denny Chin on 7/12/07) [*** NOTE: Original document filed as doc.#19 in 04-cr-236(DC). ***] (bw) (Entered: 07/17/2007)
08/13/2007	<u>2</u>	ORDER as to Nestor Cano. On 7/12/07, I denied pro se litigant Nestor Cano's motion for habeas relief pursuant to 28 U.S.C. Section 2255, and declined to issue a certificate of appealability. Cano now moves for reconsideration of the July 12th decision, pursuant to F.R.Civ.P. 59(e)....[See Order]... For the reasons set forth above and those in the July 12th decision, the motion for reconsideration is hereby denied. Because Cano has not made a substantial showing of the denial of a constitutional right, I decline to issue a certificate of appealability. I certify pursuant to 28 U.S.C. Section 1915(a)(3) that any appeal taken from this order would not be taken in good faith. (Signed by Judge Denny Chin on 8/13/07) [*** NOTE: Original document filed as doc.#21 in 04-cr-236(DC) ***] (bw) Additional attachment(s) added on 8/14/2007 (Lewis, Diahann). (Entered: 08/14/2007)
02/11/2008	<u>3</u>	NOTICE OF APPEAL from 2 Order. Document filed by Nestor Cano. (tp) (Entered: 02/25/2008)
02/11/2008		Appeal Remark as to 3 Notice of Appeal filed by Nestor Cano. \$455.00 APPEAL FEE DUE. IFP REVOKED 8/13/07. COA DENIED 8/13/07. (tp) (Entered: 02/25/2008)
02/25/2008		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 3 Notice of Appeal. (tp) (Entered: 02/25/2008)
02/25/2008		Transmission of Notice of Appeal to the District Judge re: 3 Notice of Appeal. (tp) (Entered: 02/25/2008)